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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/939,860	08/27/2001	Lynnwood C. Cook	COOK 3.2	3207
37190	7590	10/19/2004	EXAMINER	
VARNUM, RIDDERING, SCHMIDT & HOWLETT LLP 333 BRIDGE STREET, NW P.O. BOX 352 GRAND RAPIDS, MI 49501-0352			GRILES, BETHANY L	
			ART UNIT	PAPER NUMBER
			3643	

DATE MAILED: 10/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/939,860	COOK, LYNNWOOD C. <i>ST</i>	
	Examiner Bethany L. Griles	Art Unit 3643	

— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 16 August 2004.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-19 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-3,14 and 15 is/are rejected.

7) Claim(s) 4 10 12 14 16 17 18 19 is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Response to Arguments***

Applicant's arguments filed 8/16/04 have been fully considered but they are not persuasive. The applicant claims a "rapidly" disintegrating material, but "rapidly" is a relative term and therefore cannot be considered a patentable feature of the immediate invention. Likewise, the claim language reciting that the pot is of a "substantial thickness" fails to define the Applicant's invention over the cited prior art. Regarding the composition of the Beatty reference, the formation of a "dough" is believed to be equivalent to a compressed particulate material. Furthermore, if Schimmerling discloses the use of a biocide in the material, it would have been within the skill of one of ordinary skill in the art to add a nutrient as well as or in lieu of the biocide. Finally, Schimmerling discloses the use of an organic material, which is what is also being claimed by the Applicant. It is for these reasons that the Examiner believes the rejection is proper and the rejection of claims 1-3, 5-9, 11, 14, and 15 stands.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-3, 14, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beatty (US 5,335,449) in view of Schimmerling (FR 2642697 A1)

Regarding claims 1 and 14, a plant shell comprising a peripheral wall (see fig 3), being formed of biodegradable constituents (col 3, line 32); that it is water responsive (col 3, line 33); is of porosity to permit water and root penetration (see fig 3); and that it will retain its shape until water is introduced (col 3, line 22).

Beatty does not disclose that the constituents include a particulate organic base.

Schimmerling discloses an organic based material (see line 2 of abstract).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of Schimmerling to the invention of Beatty, as an organic material is biodegradable and porous, as required by Beatty.

Regarding claims 2 and 15, Beatty discloses a combination of organic ingredients to increase water retention and time release nutrients (col 3, lines 30-60).

Beatty does not disclose that the constituents of the shell include a particulate organic base.

Schimerling discloses an organic base material (see line 2 of abstract).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of Schimmerling to the invention of Beatty, as an organic material is biodegradable and porous, as required by Beatty.

Regarding claim 3, Beatty discloses that the shell permits root and water permeation (col 3, lines 8-16).

Claims 5-9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beatty in view of Schimmelung as applied to claims 1-3 above, and further in view of Bellucci et al. (6,195,935) (hereinafter known as 935).

Regarding claim 5, Beatty as modified by Schimmerling discloses the shell as described in claim 1.

Beatty as modified by Schimmerling does not disclose peat moss, manure, and top soil.

935 discloses organic matter (col 2, line 24) (which includes peat moss and manure); and top soil (col 2, line 15).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of 935 to the invention of Beatty as modified by Schimmerling to provide the plant with a viable growing environment. All of the components listed above are regularly used in horticulture.

Regarding claim 6, Beatty as modified by Schimmerling discloses the shell as described in claim 1.

Beatty as modified by Schimmerling does not disclose fertilizer.

935 discloses fertilizer (col 2, line 20).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of 935 to the invention of Beatty as modified by Schimmerling to provide the plant with a viable growing environment. Fertilizer is regularly used in horticulture.

Regarding claim 7, Beatty discloses that the plant shell is a standard size and shape (see fig 3).

Regarding claim 8, Beatty discloses that the plant shell is a standard size and shape (see fig 3).

Regarding claim 9, Beatty discloses that the plant shell 30 provides desirable nutrition and water retention (col 3, lines 30-60).

Regarding claim 11, Beatty discloses that the shell structure breaks down with the pressure of moisture (col 4, lines 4-20).

***Allowable Subject Matter***

Claims 4, 10, 12, 13, 16, 17, 18, and 19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bethany L. Griles whose telephone number is 703.305.1839. The examiner can normally be reached on Monday through Friday 8:00 am - 4:30 pm.

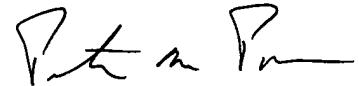
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703.308.2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Bethany L. Griles

Examiner  
Art Unit 3643

blg



Peter M. Poon  
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